

AMENDED IN SENATE JULY 10, 2001

AMENDED IN SENATE JUNE 21, 2001

AMENDED IN ASSEMBLY MAY 30, 2001

AMENDED IN ASSEMBLY MAY 1, 2001

AMENDED IN ASSEMBLY APRIL 19, 2001

AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 489

Introduced by Assembly Member Migden

February 21, 2001

An act to add Section 10247.5 to the Business and Professions Code, to add Chapter 7.6 (commencing with Section 1922) to Title 4 of Part 4 of Division 3 of the Civil Code, and to add Sections 3398, 7508, 22168, and 50511 to the Financial Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 489, as amended, Migden. Loans secured by real property.

Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law provides for regulation of real estate brokers by the Department of Real Estate. Existing law provides for regulation of finance lenders and residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing savings associations, real estate brokers, and residential mortgage lenders are crimes.

This bill would prohibit real estate brokers and agents, commercial and industrial banks, savings associations, finance lenders, and residential mortgage lenders that make or service high-cost residential mortgage loans or consumer loans secured by liens on real property to consumers whose *household* income is at or below 120 percent of the median *household* income for the area from engaging in the following lending practices in the making of high-cost loans: making a subsequent loan to refinance the original loan that results in no *substantial* net economic benefit, selling of additional products in the loan agreement, making of a loan without regard to the borrower's ~~monthly income and obligations~~ *ability to repay*, and charging of fees for loan services that bear no reasonable relationship to the value *and cost* of services actually performed. The bill would define a high-cost loan to mean a loan that has an annual percentage rate in excess of a specified rate or that has points and fees in excess of 5 percent of the loan amount.

Because willful violations of these provisions with respect to savings associations, real estate brokers, and residential mortgage lenders would be crimes, this bill would impose a state-mandated local program by creating new crimes.

This bill would also impose various requirements with respect to residential mortgage loans and consumer loans secured by liens on real property made or serviced by specified lenders. A willful violation of these provisions would be a crime and would permit a court to rescind the loan contract and award fees and costs, as specified.

This bill would also make a statement of legislative findings and intent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:



(a) There has been an explosion in the amount of credit made available to low-income borrowers in recent years, as a result of economic growth, technological changes, and financial innovations. A significant portion of this expansion has occurred in the subprime lending market, which refers to lending to borrowers who do not qualify for prime rates, either because of impaired credit histories or low incomes. According to the United States Department of the Treasury, subprime lending nationwide increased from \$35 billion in 1994 to \$370 billion in 1999.

(b) Subprime loans often are structured as mortgage refinancings or second mortgages. Approximately 70 percent of subprime loans are for consumer credit card consolidation. Most subprime loans are made by nondepository finance or mortgage companies that are not subject to routine regulatory compliance review.

(c) Many subprime lenders offer a vital service to low-income borrowers who do not qualify for credit from mainstream financial institutions. However, many low-income borrowers have been victimized by improper subprime lending practices such as excessive fees and interest rates, repetitive refinancings, hidden costs, unnecessary insurance, and deceptive use of balloon payments. The abusive practices found in the subprime lending industry are referred to as predatory lending. Through misleading and deceptive sales practices, predatory lenders target cash-poor homeowners as customers for high-cost loans that often deprive these homeowners of the equity in their homes.

(d) It is the intent of the Legislature to improve consumers protection against predatory lending practices.

SEC. 2. Section 10247.5 is added to the Business and Professions Code, to read:

10247.5. (a) Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a real estate broker or agent to a consumer whose *household* income is at or below 120 percent of the median *household* income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.

(b) A “high-cost” loan means a loan that is either of the following:

(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately proceeding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.

~~(c) The following lending practices are prohibited in the making of high-cost loans:~~

(c) Predatory lending practices are prohibited in the making and servicing of high cost loans. These practices include, but are not limited to, the following:

(1) The making of a subsequent loan to refinance the original loan, also known as “flipping,” that results in no net *substantial* economic benefit to the borrower.

(2) The selling of additional products in a loan agreement, also known as “packing.”

(3) The making of a loan without regard to the borrower’s ~~monthly income and obligations~~; *ability to repay, considering the borrower’s current and expected income, current obligations, and employment status.*

(4) The charging of fees for loan services that bear no reasonable relationship to the value *and cost* of services actually performed.

SEC. 3. Chapter 7.6 (commencing with Section 1922) is added to Title 4 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 7.6. LOANS SECURED BY REAL PROPERTY

1922. (a) Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a real estate broker or agent, a commercial or industrial bank, a savings association, or a finance lender to a consumer whose *household* income is at or below 120 percent of the median *household* income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.

(b) A “high-cost” loan means a loan that is either of the following:

(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately proceeding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.

~~(e) The following lending practices are prohibited in the making of high-cost loans:~~

(c) Predatory lending practices are prohibited in the making and servicing of high cost loans. These practices include, but are not limited to, the following:

(1) The making of a subsequent loan to refinance the original loan, also known as “flipping,” that results in no net *substantial* economic benefit to the borrower.

(2) The selling of additional products in a loan agreement, also known as “packing.”

~~(3) The making of a loan without regard to the borrower’s monthly income and obligations.~~ *ability to repay, considering the borrower’s current and expected income, current obligations, and employment status.*

(4) The charging of fees for loan services that bear no reasonable relationship to the value *and cost* of services actually performed.

(d) (l) Before any person may provide real estate brokerage services, as defined in Section 10131 of the Business and Professions Code, to a borrower for a loan contract subject to this section, the broker shall enter into a written loan brokerage contract with the borrower that satisfies the requirement of this section.

(2) The loan brokerage contract shall contain an explicit statement that the broker is acting as the agent of the borrower in providing brokerage services to the borrower, and when acting as agent for the borrower, the broker owes to that borrower a fiduciary duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the broker is authorized to act as an agent for any other

1 person relative to the transaction, the loan brokerage contract shall
2 contain a statement of that fact and identification of that person.

3 (3) The loan brokerage contract shall contain a detailed
4 description of the services that the broker agrees to perform for the
5 borrower, and a good faith estimate of any fees the broker will
6 receive for those services, whether paid by the borrower, the
7 institutional lender, or both.

8 (4) The loan brokerage contract shall include a clear and
9 conspicuous statement of the conditions under which the borrower
10 is obligated to pay the broker for brokerage services rendered
11 under the contract.

12 (5) The loan brokerage contract shall provide that, if the broker
13 makes a ~~materially~~ false or *deceptive* statement or omission *about*
14 *a fact that is material* in the inducement or implementation of the
15 contract, a court may, in addition to any other legal rights or
16 remedies, do any of the following:

17 (A) Rescind the loan brokerage contract.

18 (B) Award fees paid by the borrower to the broker for
19 brokerage services rendered by the broker pursuant to the loan
20 brokerage contract.

21 (C) Award actual costs, including attorney's fees, for enforcing
22 the borrower's rights under the loan brokerage contract.

23 ~~(e) Any person who willfully violates any provision of this~~
24 ~~section is guilty of a crime and shall, upon conviction, be punished~~
25 ~~by a fine of not more than fifty thousand dollars (\$50,000), by~~
26 ~~imprisonment in a county jail for not more than one year or in the~~
27 ~~state prison, or by both that fine and imprisonment.~~

28 SEC. 4. Section 3398 is added to the Financial Code, to read:

29 3398. (a) Notwithstanding any other provision of law, this
30 section shall apply to all high-cost residential mortgage loans and
31 consumer loans secured by liens on real property made or serviced
32 by a commercial or industrial bank to a consumer whose
33 *household* income is at or below 120 percent of the median
34 *household* income of the standard metropolitan statistical area in
35 which the consumer resides or the nearest area if the consumer
36 does not reside within a standard metropolitan statistical area.

37 (b) A "high-cost" loan means a loan that is either of the
38 following:

39 (1) The annual percentage rate at consummation will exceed by
40 more than 5 percentage points the yield on Treasury securities

1 having comparable periods of maturity to the loan maturity as of
2 the 15th day of the month immediately proceeding the month in
3 which the application for the extension of credit is received by the
4 creditor.

5 (2) The total points and fees payable by the consumer at or
6 before loan closing will exceed 5 percent of the total loan amount.

7 ~~(c) The following lending practices are prohibited in the~~
8 ~~making of high-cost loans:~~

9 (c) *Predatory lending practices are prohibited in the making*
10 *and servicing of high cost loans. These practices include, but are*
11 *not limited to, the following:*

12 (1) The making of a subsequent loan to refinance the original
13 loan, also known as “flipping,” that results in no net *substantial*
14 economic benefit to the borrower.

15 (2) The selling of additional products in a loan agreement , also
16 known as “packing.”

17 (3) The making of a loan without regard to the borrower’s
18 ~~monthly income and obligations:~~ *ability to repay, considering the*
19 *borrower’s current and expected income, current obligations, and*
20 *employment status.*

21 (4) The charging of fees for loan services that bear no
22 reasonable relationship to the value *and cost* of services actually
23 performed.

24 SEC. 5. Section 7508 is added to the Financial Code, to read:

25 7508. (a) Notwithstanding any other provision of law, this
26 section shall apply to all high-cost residential mortgage loans and
27 consumer loans secured by liens on real property made or serviced
28 by a savings association to a consumer whose *household* income
29 is at or below 120 percent of the median *household* income of the
30 standard metropolitan statistical area in which the consumer
31 resides or the nearest area if the consumer does not reside within
32 a standard metropolitan statistical area.

33 (b) A “high-cost” loan means a loan that is either of the
34 following:

35 (1) The annual percentage rate at consummation will exceed by
36 more than 5 percentage points the yield on Treasury securities
37 having comparable periods of maturity to the loan maturity as of
38 the 15th day of the month immediately proceeding the month in
39 which the application for the extension of credit is received by the
40 creditor.

(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.

~~(c) The following lending practices are prohibited in the making of high-cost loans:~~

(c) Predatory lending practices are prohibited in the making and servicing of high cost loans. These practices include, but are not limited to, the following:

(1) The making of a subsequent loan to refinance the original loan, also known as “flipping,” that results in no net *substantial* economic benefit to the borrower.

(2) The selling of additional products in a loan agreement , also known as “packing.”

(3) The making of a loan without regard to the borrower’s ~~monthly income and obligations.~~ *ability to repay, considering the borrower’s current and expected income, current obligations, and employment status.*

(4) The charging of fees for loan services that bear no reasonable ~~to~~ relationship to the value *and cost* of services actually performed.

SEC. 6. Section 22168 is added to the Financial Code, to read:

22168. (a) Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a finance lender to a consumer whose *household* income is at or below 120 percent of the median *household* income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.

(b) A “high-cost” loan means a loan that is either of the following:

(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately proceeding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.

~~(c) The following lending practices are prohibited in the making of high-cost loans:~~

1 (c) *Predatory lending practices are prohibited in the making*
2 *and servicing of high cost loans. These practices include, but are*
3 *not limited to, the following:*

4 (1) The making of a subsequent loan to refinance the original
5 loan, also known as “flipping,” that results in no net *substantial*
6 economic benefit to the borrower.

7 (2) The selling of additional products in a loan agreement , also
8 known as “packing.”

9 (3) The making of a loan without regard to the borrower’s
10 ~~monthly income and obligations.~~ *ability to repay, considering the*
11 *borrower’s current and expected income, current obligations, and*
12 *employment status.*

13 (4) The charging of fees for loan services that bear no
14 reasonable relationship to the value *and cost* of services actually
15 performed.

16 SEC. 7. Section 50511 is added to the Financial Code, to read:

17 50511. (a) Notwithstanding any other provision of law, this
18 section shall apply to all high-cost residential mortgage loans and
19 consumer loans secured by liens on real property made or serviced
20 by a residential mortgage lender to a consumer whose *household*
21 income is at or below 120 percent of the median *household* income
22 of the standard metropolitan statistical area in which the consumer
23 resides or the nearest area if the consumer does not reside within
24 a standard metropolitan statistical area.

25 (b) A “high-cost” loan means a loan that is either of the
26 following:

27 (1) The annual percentage rate at consummation will exceed by
28 more than 5 percentage points the yield on Treasury securities
29 having comparable periods of maturity to the loan maturity as of
30 the 15th day of the month immediately proceeding the month in
31 which the application for the extension of credit is received by the
32 creditor.

33 (2) The total points and fees payable by the consumer at or
34 before loan closing will exceed 5 percent of the total loan amount.

35 ~~(c) The following lending practices are prohibited in the~~
36 ~~making of high-cost loans:~~

37 (c) *Predatory lending practices are prohibited in the making*
38 *and servicing of high cost loans. These practices include, but are*
39 *not limited to, the following:*

1 (1) The making of a subsequent loan to refinance the original
2 loan, also known as “flipping,” that results in no net *substantial*
3 economic benefit to the borrower.

4 (2) The selling of additional products in a loan agreement , also
5 known as “packing.”

6 (3) The making of a loan without regard to the borrower’s
7 ~~monthly income and obligations.~~ *ability to repay, considering the*
8 *borrower’s current and expected income, current obligations, and*
9 *employment status.*

10 (4) The charging of fees for loan services that bear no
11 reasonable relationship to the value *and cost* of services actually
12 performed.

13 SEC. 8. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

